

FIRST INDUSTRIAL REALTY TRUST INC

Form 424B5

August 15, 2006

Table of Contents

This prospectus supplement relates to an effective registration statement under the Securities Act of 1933, but is not complete and may be changed. This prospectus supplement is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**Filed Pursuant to Rule 424(b)(5)
Registration No. 333-117842**

**SUBJECT TO COMPLETION, DATED AUGUST 15, 2006
PRELIMINARY PROSPECTUS SUPPLEMENT TO PROSPECTUS DATED AUGUST 30, 2004
2,000,000 Shares**

**First Industrial Realty Trust, Inc.
Depository Shares Each Representing 1/10,000 of a Share of
% Series K Cumulative Redeemable Preferred Stock
Liquidation Preference Equivalent to \$25.00 Per Depository Share**

Each of the 2,000,000 depository shares offered hereby represents ownership of 1/10,000 of a share of our % Series K Cumulative Redeemable Preferred Stock (sometimes referred to in this prospectus supplement as the Series K Preferred Shares or the preferred shares) deposited with Computershare Trust Company, N.A., as depository, and entitles the holder to all proportional rights, preferences and privileges of the preferred shares represented thereby (including dividend, voting, redemption and liquidation rights and preferences). The proportionate liquidation preference of each depository share is \$25.00.

Dividends on the preferred shares represented by the depository shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears, commencing on September 30, 2006, at the rate of % of the liquidation preference per year (equivalent to \$ per depository share per year).

Except in limited circumstances relating to our qualification as a real estate investment trust, or REIT, the preferred shares will not be redeemable prior to August 15, 2011. On and after August 15, 2011, at any time and from time to time the preferred shares (and, therefore, the depository shares) will be redeemable in whole or in part at our option, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depository share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

In order to maintain our qualification as a REIT for federal income tax purposes, ownership by any person of our depository shares, the preferred shares and other classes of our capital stock is limited, with certain exceptions, to an aggregate of 9.9% in value of our outstanding capital stock.

Investing in the depository shares involves risks that are described in the Risk Factors sections beginning on page S-5 of this prospectus supplement and page 3 of the accompanying prospectus.

	Price to Public(1)	Underwriting Discounts and Commissions	Proceeds to First Industrial
Per Depository Share	\$ 25.0000	\$ 0.7875	\$ 24.2125
Total	\$ 50,000,000	\$ 1,575,000	\$ 48,425,000

(1) Plus accrued dividends, if any, from the date of original issuance.

We expect that delivery of the depository shares offered hereby in book-entry form only will be made against payment therefor in New York, New York on or about August , 2006. We intend to list the depository shares on the NYSE. Trading of the depository shares on the NYSE is expected to commence within the 30-day period after the initial delivery of the depository shares. We have been advised by some of the underwriters that they intend to make a

market in our depositary shares prior to the commencement of trading on the NYSE. However, they are not obligated to do so and may discontinue market-making at any time without notice. Therefore, no assurance can be given that a market for the depositary shares will exist prior to commencement of trading on the NYSE.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Wachovia Securities
Joint Bookrunning Manager

Merrill Lynch & Co.
Joint Bookrunning Manager

Credit Suisse
Senior Co-Manager

JPMorgan
Senior Co-Manager

BB&T Capital Markets
Co-Manager

Raymond James
Co-Manager

The date of this prospectus supplement is August , 2006.

TABLE OF CONTENTS

	Page
Prospectus Supplement	
<u>Forward-Looking Statements</u>	ii
<u>Prospectus Supplement Summary</u>	S-1
<u>Risk Factors</u>	S-5
<u>Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends</u>	S-8
<u>Use of Proceeds</u>	S-9
<u>Description of Series K Preferred Shares and Depositary Shares</u>	S-10
<u>Certain U.S. Federal Income Tax Considerations</u>	S-15
<u>Underwriting</u>	S-20
<u>Notice to Canadian Residents</u>	S-22
<u>Legal Matters</u>	S-23
Prospectus	
About This Prospectus	1
The Company and the Operating Partnership	1
Risk Factors	3
Ratios of Earnings to Fixed Charges	4
Use of Proceeds	4
Plan of Distribution	4
Description of Debt Securities	7
Description of Preferred Stock	19
Description of Depositary Shares	25
Description of Common Stock	28
Certain Provisions of Maryland Law and the Company's Articles of Incorporation and Bylaws	30
Restrictions on Transfers of Capital Stock	32
Certain U.S. Federal Income Tax Considerations	33
Forward-Looking Statements	35
Where You Can Find More Information	36
Documents Incorporated by Reference	36
Experts	37
Legal Matters	37

You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We and the underwriters have not authorized anyone to provide you with information that is different. This prospectus supplement and the accompanying prospectus may only be used where it is legal to sell these securities. The information in this prospectus supplement and the accompanying prospectus may only be accurate as of the date of this prospectus supplement, the accompanying prospectus or the information incorporated by reference herein and therein.

Table of Contents

FORWARD-LOOKING STATEMENTS

This prospectus supplement and the accompanying prospectus, including the documents incorporated by reference herein and therein, contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for purposes of complying with those safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words believe, expect, intend, anticipate, estimate, project, similar expressions. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Factors which could have a material adverse effect on our operations and future prospects on a consolidated basis include, but are not limited to:

economic conditions generally and the real estate market specifically;

legislative/regulatory changes (including changes to laws governing the taxation of REITs);

availability of financing;

interest rates;

competition;

supply and demand for industrial properties in our current and proposed market areas;

potential environmental liabilities;

slippage in development or lease-up schedules;

tenant credit risks; and

higher-than-expected costs and changes in general accounting principles, policies and guidelines applicable to REITs.

These risks and uncertainties should be considered in evaluating forward-looking statements, and undue reliance should not be placed on such statements. Further information concerning us and our business, including additional factors that could materially affect our financial results, is included or incorporated by reference herein and in the accompanying prospectus.

Table of Contents

PROSPECTUS SUPPLEMENT SUMMARY

The Company

We are a real estate investment trust, subject to Sections 856 through 860 of the Internal Revenue Code of 1986, as amended. We and our consolidated partnerships, corporations and limited liability companies are a self-administered and fully integrated real estate company which owns, manages, acquires, sells and develops industrial real estate. As of June 30, 2006, our portfolio consisted of 946 properties (inclusive of developments in process) containing approximately 77.5 million square feet of gross leasable area located in 28 states in the United States and one province in Canada. Our interests in our properties and land parcels are held through partnerships, corporations and limited liability companies controlled by us, including First Industrial, L.P., our operating partnership, of which we are the sole general partner.

We utilize an operating approach that combines the effectiveness of decentralized, locally based property management, acquisition, sales and development functions with the cost efficiencies of centralized acquisition, sales and development support, capital markets expertise, asset management and fiscal control systems.

We have grown and will seek to continue to grow through the acquisition and development of industrial properties.

We are a Maryland corporation organized on August 10, 1993 and completed our initial public offering in June 1994. Our principal executive offices are located at 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, telephone number (312)344-4300. Our web site is www.firstindustrial.com. The information on or linked to from our web site is not a part of, and is not incorporated by reference into, this prospectus supplement or the accompanying prospectus.

Table of Contents**The Offering**

The offering terms are summarized below solely for your convenience. This summary is not a complete description of the preferred shares or the depositary shares. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of the preferred shares and the depositary shares, see the discussion under the caption "Description of Series K Preferred Shares and Depositary Shares" beginning on page S-10 of this prospectus supplement.

Issuer	First Industrial Realty Trust, Inc., a Maryland corporation.
Securities Offered	2,000,000 depositary shares, each representing 1/10,000 of a share of our Series K Cumulative Redeemable Preferred Stock. %
Price per Depositary Share	\$25.00.
Ranking	<p>The preferred shares will rank with respect to dividends and upon liquidation, dissolution or winding up:</p> <p style="padding-left: 40px;">senior to our common shares and to any other class or series of our capital stock that by its terms ranks junior to the preferred shares;</p> <p style="padding-left: 40px;">equally with all other classes or series of our capital stock that by their terms rank equally with the preferred shares;</p> <p style="padding-left: 40px;">junior to all other classes or series of our capital stock that by their terms rank senior to the preferred shares; and</p> <p style="padding-left: 40px;">junior to all of our indebtedness.</p>
Dividend Rate and Payment Dates	<p>Dividends on the preferred shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on September 30, 2006, at the rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). The preferred shares are not subject to any step-up dividend provision. Any dividend payable on the preferred shares for any partial dividend period will be pro rated, computed on the basis of a 360 day year consisting of twelve 30 day months.</p> <p>Dividends on the preferred shares will accumulate even if:</p> <p style="padding-left: 40px;">any of our agreements prohibit the current payment of dividends;</p> <p style="padding-left: 40px;">we do not have earnings or funds legally available to pay such dividends; or</p> <p style="padding-left: 40px;">we do not declare such dividends.</p>
Liquidation Preference	If we liquidate, dissolve or wind up, holders of the depositary shares will have the right to receive \$25.00 per depositary share, plus all accrued and unpaid dividends (whether or not declared) through and including the date of payment, before any payments are made to the holders of our shares of common stock or other junior securities.

Table of Contents

Optional Redemption	Except in limited circumstances relating to the maintenance of our ability to qualify as a REIT, the preferred shares will not be redeemable prior to August 15, 2011. On and after such date, at any time and from time to time the preferred shares (and, therefore, the depositary shares) will be redeemable in whole or in part at our option, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.
Voting Rights	Holder of the preferred shares generally have no voting rights, except as required by law. However, if we do not pay dividends on the preferred shares for six or more quarterly periods (whether or not consecutive), the holders of the preferred shares, voting as a class with any other class or series of our capital stock ranking equal with the preferred shares as to dividends or upon liquidation, will be entitled to vote for the election of two additional directors to serve on our board of directors until we pay or have authorized and set aside for payment in full all dividends that we owe on the preferred shares. In addition, the affirmative vote of the holders of at least two-thirds of all of our outstanding preferred shares and any series of capital stock with similar voting rights is required for us to authorize another class of capital stock ranking senior to the preferred shares as to dividends or upon liquidation or to amend, alter or repeal our articles of amendment and restatement if such action would materially and adversely alter or change the rights, preferences or privileges of the preferred shares. Among other things, we may, without any vote of the holders of the preferred shares, issue additional preferred shares.
Conversion	The preferred shares are not convertible into or exchangeable for any other of our property or securities.
Restrictions on Ownership and Transfer	In order to assist us in maintaining our qualification as a REIT for U.S. federal income tax purposes, subject to limited exceptions our charter prohibits ownership, actually or constructively, by any person of more than 9.9% of the aggregate value of all shares of our capital stock of all classes or series, including preferred shares.
No Maturity	The preferred shares have no stated maturity and are not subject to mandatory redemption or any sinking fund. We are not required to set aside funds to redeem the preferred shares. Accordingly, the preferred shares will remain outstanding indefinitely unless we decide to redeem the shares at our option.
Listing	We intend to file an application with the NYSE to list the depositary shares under the symbol FRPrK subject to official notice of issuance. We will use commercially reasonable efforts to have our listing application for the preferred shares approved. If approved, trading of the preferred shares on the NYSE is expected to commence within 30 days after the initial delivery of the preferred shares.

Table of Contents

Use of Proceeds	We intend to use the net proceeds from the sale of the preferred shares for repayment of borrowings under our credit facility.
Settlement Date	Delivery of the depositary shares will be made against payment therefor on or about August , 2006.
Form	The depositary shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company.
Risk Factors	See Risk Factors beginning on page S-5 of this prospectus supplement for other information you should consider before buying the depositary shares.

S-4

Table of Contents**RISK FACTORS**

An investment in the depositary shares involves various material risks. Prior to making a decision about investing in our securities, and in consultation with your own financial and legal advisors, you should carefully consider, among other matters, the following risk factors, as well as those incorporated by reference in this prospectus supplement and included in the accompanying prospectus or incorporated therein from our most recent annual report on Form 10-K under the heading "Risk Factors", as updated by our quarterly reports on Form 10-Q and other filings we may make from time to time with the SEC.

Risks Relating to the Company***The Company might fail to qualify or remain qualified as a REIT.***

First Industrial Realty Trust, Inc. intends to operate so as to qualify as a REIT under the Internal Revenue Code of 1986 (the Code). Although First Industrial Realty Trust, Inc. believes that it is organized and will operate in a manner so as to qualify as a REIT, qualification as a REIT involves the satisfaction of numerous requirements, some of which must be met on a recurring basis. These requirements are established under highly technical and complex Code provisions of which there are only limited judicial or administrative interpretations and involve the determination of various factual matters and circumstances not entirely within First Industrial Realty Trust, Inc.'s control.

First Industrial Realty Trust, Inc. (through one of its subsidiary partnerships) entered into certain development agreements in 2000 through 2003, the performance of which has been completed. Under these agreements, First Industrial Realty Trust, Inc. provided services to unrelated third parties and certain payments were made by the unrelated third parties for services provided by certain contractors hired by First Industrial Realty Trust, Inc. First Industrial Realty Trust, Inc. believes that these payments were properly characterized by it as reimbursements for costs incurred by it on behalf of the third parties and do not constitute gross income and did not prevent First Industrial Realty Trust, Inc. from satisfying the gross income requirements of the REIT provisions (the gross income tests). First Industrial Realty Trust, Inc. has brought this matter to the attention of the Internal Revenue Service, or the IRS. The IRS has not challenged or expressed any interest in challenging First Industrial Realty Trust Inc.'s view on this matter.

Employees of First Industrial, L.P., a subsidiary partnership of First Industrial Realty Trust, Inc. (the Service Employees), have been providing certain acquisition and disposition services since 2004 and certain leasing and property management services since 1997 to one of First Industrial Realty Trust, Inc.'s taxable REIT subsidiaries (the TRS), and have also been providing certain of these services (or similar services) to joint ventures in which First Industrial, L.P. owns a minority interest or to unrelated parties. In determining whether it satisfied the gross income tests for certain years, First Industrial Realty Trust, Inc. has taken and intends to take the position that the costs of the Service Employees should be shared between First Industrial, L.P. and the TRS and that no fee income should be imputed to First Industrial Realty Trust, Inc. as a result of such arrangement. However, because certain of these services (or similar services) have also been performed for the joint ventures or unrelated parties described above, there can be no assurance that the IRS will not successfully challenge this position. First Industrial, L.P. intends to take appropriate steps to address this issue going forward, but there can be no assurance that any such steps will adequately resolve this issue.

If the IRS were to challenge either of the positions described in the two preceding paragraphs and were successful, First Industrial Realty Trust, Inc. could be found not to have satisfied the gross income tests in one or more of its taxable years. If First Industrial Realty Trust, Inc. were found not to have satisfied the gross income tests, it could be subject to a penalty tax. However, such noncompliance should not adversely affect First Industrial Realty Trust, Inc.'s status as a REIT as long as such noncompliance was due to reasonable cause and not to willful neglect, and certain other requirements are met. First Industrial Realty Trust, Inc. believes that, in both situations, any such noncompliance was due to reasonable cause and not willful neglect and that such other requirements were met.

Table of Contents

If First Industrial Realty Trust, Inc. were to fail to qualify as a REIT in any taxable year, it would be subject to federal income tax, including any applicable alternative minimum tax, on its taxable income at corporate rates. This could result in a discontinuation or substantial reduction in dividends to stockholders and in cash to pay interest and principal on debt securities that First Industrial Realty Trust, Inc. issues. Unless entitled to relief under certain statutory provisions, First Industrial Realty Trust, Inc. also would be disqualified from electing treatment as a REIT for the four taxable years following the year during which it failed to qualify as a REIT.

Risks Relating to the Preferred Shares

The market value of the depositary shares could be substantially affected by various factors.

The depositary shares are a new issue of securities with no established trading market. We intend to apply to list the depositary shares on the NYSE. However, an active trading market on the NYSE for the depositary shares may not develop or last, in which case the trading price of the depositary shares could be adversely affected. If an active trading market does develop on the NYSE, the depositary shares may trade at prices higher or lower than their initial offering price. The trading price of our depositary shares would depend on many factors, including:

prevailing interest rates;

the market for similar securities;

general economic conditions; and

our financial condition, results of operations and prospects.

We have been advised by some of the underwriters that they intend to make a market in our depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

Our ability to pay dividends on the preferred shares may be limited.

Because we conduct substantially all of our operations through our operating partnership, our ability to pay dividends on the preferred shares will depend almost entirely on payments and dividends received on our interests in our operating partnership. Additionally, the terms of some of the debt to which our operating partnership is a party limit its ability to make some types of payments and other dividends to us. This in turn limits our ability to make some types of payments, including payment of dividends on the preferred shares, unless we meet certain financial tests or such payments or dividends are required to maintain our qualification as a REIT. As a result, if we are unable to meet the applicable financial tests, we may not be able to pay dividends on the preferred shares in one or more periods.

Our ability to pay dividends is further limited by the requirements of Maryland law.

Our ability to pay dividends on the preferred shares is further limited by the laws of Maryland. Under Maryland General Corporation Law, a Maryland corporation may not make a distribution if, after giving effect to the distribution, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. Accordingly, we may not make a distribution on the preferred shares if, after giving effect to the distribution, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus the amount that would be needed to satisfy the preferential rights upon dissolution of the holders of any shares of the preferred shares then outstanding, if any, with preferences senior to those of the preferred shares.

Table of Contents

We may incur additional indebtedness, which may harm our financial position and cash flow and potentially impact our ability to pay dividends on the preferred shares.

Our governing documents do not limit us from incurring additional indebtedness and other liabilities. As of June 30, 2006, we had approximately \$1,819 million of consolidated indebtedness outstanding. We may incur additional indebtedness and become more highly leveraged, which could harm our financial position and potentially limit our cash available to pay dividends. As a result, we may not have sufficient funds remaining to satisfy our dividend obligations relating to our preferred shares if we incur additional indebtedness.

We cannot assure you that we will be able to pay dividends regularly.

Our ability to pay dividends in the future is dependent on our ability to operate profitably and to generate cash from our operations. We cannot guarantee that we will be able to pay dividends on a regular quarterly basis in the future. Furthermore, any new shares of common stock issued will substantially increase the cash required to continue to pay cash dividends at current levels. Any common stock or preferred shares that may in the future be issued to finance acquisitions, upon exercise of stock options or otherwise, would have a similar effect.

Our ability to issue preferred stock in the future could adversely affect the rights of holders of our preferred shares.

Our articles of amendment and restatement authorize us to issue up to 10,000,000 shares of preferred stock in one or more series on terms determined by our board of directors. As of June 30, 2006, we had 21,350 shares of preferred stock outstanding. Our future issuance of any series of preferred stock under our articles of amendment and restatement could therefore effectively diminish our ability to pay dividends on, and the liquidation preference of, our preferred shares.

Certain transactions may affect the liquidity of the preferred shares and the right of holders of the preferred shares to receive comprehensive data on our company on a periodic basis.

If we engage in a sale, lease, conveyance of all, or substantially all, of our assets or a merger or other business combination that (i) results in the preferred shares not being listed on a national securities exchange and/or (ii) our company or any successor company to us not being subject to the reporting requirements of the Securities Exchange Act of 1934, then the preferred shares might no longer have an established trading market and your liquidity would be adversely affected. Additionally, you would not have access to, or any entitlement to, the types of information filed by us on a periodic basis with the Securities and Exchange Commission.

Table of Contents

**RATIO OF EARNINGS TO COMBINED FIXED CHARGES
AND PREFERRED STOCK DIVIDENDS**

Our ratios of earnings to combined fixed charges and preferred dividend requirements for the six months ended June 30, 2006 and for the years ended December 31, 2005, 2004, 2003, 2002 and 2001 were 0.41x, 0.73x, 1.03x, 0.90x, 0.90x and 1.26x, respectively. For the six months ended June 30, 2006 and for the years ended December 31, 2005, 2003 and 2002, the sum of fixed charges and preferred dividend requirements exceeded our earnings from continuing operations by approximately \$43.8 million, \$34.1 million, \$12.1 million and \$12.2 million, respectively. For purposes of computing the ratios of earnings to combined fixed charges and preferred dividend requirements, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations before minority interest allocable to continuing operations and income taxes allocable to continuing operations as reported in the consolidated statements of operations in our financial statements included in the documents incorporated by reference in this prospectus supplement. Fixed charges consist of interest cost, whether expensed or capitalized, and amortization of deferred financing costs.

The financial statements for the six months ended June 30, 2006 contained in our quarterly report on Form 10-Q for the quarter then ended reflect discontinued operations relating to property sales occurring between January 1, 2006 and June 30, 2006 and properties classified as held for sale as of June 30, 2006 in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, as described in Note 7 to the financial statements contained in such quarterly report, and our ratio of earnings to combined fixed charges and preferred dividend requirements for such period is computed based on such financial statements. The financial statements for each of the five years in the period ended December 31, 2005 contained in our annual report on Form 10-K for the year ended December 31, 2005 have not yet been adjusted to reflect discontinued operations relating to property sales occurring between January 1, 2006 and June 30, 2006 and properties classified as held for sale as of June 30, 2006, and our ratios of earnings to combined fixed charges and preferred dividend requirements for the five years in such period have been computed based on such unadjusted financial statements. The financial statements for each of the five years in the period ending December 31, 2006 to be contained in our annual report on Form 10-K for the year then ended will be adjusted to reflect all discontinued operations relating to property sales occurring during 2006 and properties classified as held for sale as of December 31, 2006, and our ratios of earnings to combined fixed charges and preferred dividend requirements for the five years in such period will be computed based on such adjusted financial statements.

Table of Contents

USE OF PROCEEDS

The net proceeds to us from the sale of the depositary shares offered hereby will be approximately \$48.2 million. We intend to contribute the net proceeds of the offering to our operating partnership in exchange for % Series K Preferred Units, or units, in our operating partnership, the economic terms of which will be substantially identical to the Series K Preferred Shares. Our operating partnership will be required to make all required distributions on the units (which will mirror the payments of distributions, including accrued and unpaid distributions upon redemption, and of the liquidation preference amount on the Series K Preferred Shares represented by the depositary shares) prior to any distribution of cash or assets to the holders of units or to the holders of any other equity interests in our operating partnership, except for any other series of preferred units ranking equally with or senior to the Series K Preferred Units as to distributions and/or liquidation rights and except for distributions required to enable us to maintain our qualification as a REIT.

The net proceeds from the offering of the preferred shares are expected to be used for the repayment of borrowings under our credit facility (which primarily were incurred to finance acquisition and development activities). As of June 30, 2006, our \$500 million credit facility bore interest at a rate of 5.867%. Outstanding borrowings under our \$500 million credit facility mature on September 28, 2008. Affiliates of two of the underwriters, Wachovia Capital Markets, LLC and J.P. Morgan Securities Inc., are lenders under our credit facility.

Table of Contents

DESCRIPTION OF SERIES K PREFERRED SHARES AND DEPOSITARY SHARES

General

Under our articles of amendment and restatement, as amended, up to 10,000,000 preferred shares, par value \$.01 per share, may be issued from time to time in one or more series, as authorized by our board of directors. Prior to issuance of shares of each series, our board of directors is required by the Maryland General Corporation Law and our articles of amendment and restatement to fix for each series such terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption as are permitted by Maryland law. As of the date hereof, 20,000 shares of our 8.625% Series C Cumulative Preferred Stock, 500 shares of our 6.236% Series F Flexible Cumulative Redeemable Preferred Stock, 250 shares of our 7.236% Series G Flexible Cumulative Redeemable Preferred Stock and 600 shares of our 7.25% Series J Cumulative Redeemable Preferred Stock are outstanding.

When issued, the preferred shares will have a liquidation preference of \$250,000 per share, will be fully paid and nonassessable, will not be subject to any sinking fund or other obligation by us to redeem or retire the preferred shares, and will have no preemptive rights. Each of our other outstanding series of preferred stock will rank equally as to payment by us of dividends and amounts upon liquidation with the Series K Preferred Shares. See Description of Preferred Stock in the accompanying prospectus and Description of Registrant's Securities to be Registered in our Form 8-A filed with the Securities and Exchange Commission on January 13, 2006.

Computershare Trust Company, N.A. will act as the transfer agent and dividend disbursing agent for the preferred shares.

Each depositary share represents 1/10,000 of a preferred share. The preferred shares will be deposited with Computershare Trust Company, N.A., as depositary, under a deposit agreement among us, the depositary and the holders from time to time of the depositary receipts issued by the depositary thereunder. The depositary receipts will evidence the depositary shares. Subject to the terms of the deposit agreement, each holder of a depositary receipt evidencing a depositary share will be entitled, proportionately, to all the rights and preferences of, and subject to all of the limitations of, the interest in the preferred shares represented thereby (including dividend, voting, redemption and liquidation rights and preferences). See Description of Depositary Shares in the accompanying prospectus.

Immediately following the issuance of the preferred shares, we will deposit the preferred shares with the depositary, which will then issue and deliver the depositary receipts to us. We will, in turn, deliver the depositary receipts to the underwriters. Depositary receipts will be issued evidencing only whole depositary shares.

We intend to file an application to list the depositary shares on the NYSE under the symbol FRPrK. If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of our depositary shares.

The preferred shares initially will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company, except under limited circumstances.

The following is a brief description of the terms of the preferred shares, which does not purport to be complete and is subject to and qualified in its entirety by reference to the articles supplementary to our articles of amendment and restatement with respect to the preferred shares, the form of which is available from us.

See Restrictions on Transfers of Capital Stock in the accompanying prospectus for a discussion of certain powers given to the board of directors to prohibit the transfer, or effect redemptions, of our capital stock. Such restrictions are designed to implement ownership limitations which apply to beneficial ownership of such capital stock, including through ownership of depositary shares, in order to aid us in maintaining our qualification as a REIT.

Table of Contents**Dividends**

Holders of preferred shares, in preference to the holders of our common stock, and of any of our other capital stock ranking junior to the preferred shares as to payment of dividends, will be entitled to receive, when and as declared by the board of directors, out of our assets legally available for payment, cash dividends payable quarterly at the rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). The preferred shares are not subject to any step-up dividend provision. Dividends on the preferred shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on September 30, 2006, to holders of record as they appear on our stock register on such record dates, not less than 15 nor more than 45 days preceding the payment dates thereof, as shall be fixed by the board of directors. Dividends payable on the preferred shares for any partial period will be pro-rated, computed on the basis of a 360-day year consisting of twelve 30-day months. After full dividends on the preferred shares have been paid or declared and funds set aside for payment for all past dividend periods and for the then current quarter, the holders of preferred shares will not be entitled to any further dividends with respect to that quarter. Accrued and unpaid dividends on our preferred shares will not bear interest, and holders of our preferred shares are not entitled to any dividends in excess of full cumulative dividends as described above.

When dividends are not paid in full upon the preferred shares and any other shares of our capital stock ranking equally as to dividends with the preferred shares, dividends declared upon the preferred shares and any other shares of our capital stock ranking equally as to dividends with the preferred shares shall be declared pro rata so that the amount of dividends declared per share on such preferred shares and such other capital stock shall in all cases bear to each other the same ratio that the accrued dividends per share on the preferred shares and such other shares of our capital stock bear to each other.

Except as set forth in the preceding sentence, unless full dividends on the preferred shares have been paid for all past dividend periods and except in certain circumstances relating to the maintenance of our ability to qualify as a REIT as described under Restrictions on Transfer of Capital Stock in the accompanying prospectus, no dividends (other than in common stock or other shares of our capital stock ranking junior to the preferred shares as to dividends and upon liquidation) shall be declared or paid or set aside for payment, nor shall any other distribution be made on the common stock or on any other shares of our capital stock ranking junior to or equally with the preferred shares as to dividends or upon liquidation. Unless full dividends on the preferred shares have been paid for all past dividend periods, no common stock or any of our other shares of capital stock ranking junior to or equally with the preferred shares as to dividends or upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid or made available for a sinking fund for the redemption of any such stock) by us or any of our subsidiaries except by conversion into or exchange for shares of our capital stock ranking junior to the preferred shares as to dividends and upon liquidation.

Our credit facility restricts us from paying distributions on account of any fiscal year, on an aggregate basis, in excess of 95% of our Funds From Operations (as defined in our credit facility) for such fiscal year, except in the case where such distributions are necessary to maintain our tax status as a REIT.

Conversion Rights

The preferred shares will not be convertible into shares of any other class or series of our capital stock.

Liquidation Rights

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of preferred shares will be entitled to receive out of our assets legally available for distribution to stockholders, before any distribution of assets is made to holders of shares of our common stock or of any other shares of our capital stock ranking as to such distribution junior to the preferred shares, liquidating distributions in the amount of \$250,000 per share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) for the then current dividend period and all prior

Table of Contents

dividend periods. If, upon our voluntary or involuntary liquidation, dissolution or winding up, the amounts payable with respect to the preferred shares and any other shares of our capital stock ranking as to any such distribution equally with the preferred shares are not paid in full, the holders of preferred shares and of such other capital stock will share ratably in any such distribution of our assets in proportion to the full respective preferential amounts to which they are entitled, and the holders of the preferred shares will not be entitled to any further participation in any distribution of assets by us.

For purposes of liquidation rights, our consolidation or merger with or into any other corporation or corporations or a sale of all or substantially all of our assets is not a liquidation, dissolution or winding up of us.

Redemption

Optional Redemption

Except in limited circumstances relating to the maintenance of our ability to qualify as a REIT as described under Restrictions on Transfers of Capital Stock in the accompanying prospectus, the preferred shares will not be redeemable prior to August 15, 2011. On and after August 15, 2011, at any time and from time to time, the preferred shares (and, therefore, the depositary shares) will be redeemable in whole or in part at our option at a cash redemption price of \$250,000 per share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

General

The preferred shares are not redeemable at any time at the option of the holders thereof. If fewer than all of the outstanding preferred shares are to be redeemed, the number of shares to be redeemed will be determined by our board of directors, and such shares shall be redeemed pro rata from the holders of record thereof in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by our board of directors.

Notwithstanding the foregoing, except in certain circumstances relating to the maintenance of our ability to qualify as a REIT as described under Restrictions on Transfer of Capital Stock in the accompanying prospectus, if any dividends on the preferred shares for any dividend period have not been paid, no preferred shares or other shares of our capital stock ranking equal with or junior to the preferred shares shall be redeemed unless all outstanding preferred shares are simultaneously redeemed, and we shall not otherwise purchase or acquire, directly or indirectly, any preferred shares or other shares of our capital stock ranking equal with or junior to the preferred shares; *provided, however*, that this shall not prevent the purchase or acquisition of the preferred shares pursuant to a purchase or exchange offer if such offer is made on the same terms to all holders of the preferred shares.

Redemption Procedures

Notice of redemption will be given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 or more than 60 days prior to the redemption date. A similar notice will be mailed by us, postage prepaid, not more than 60 days prior to the redemption date, addressed to the respective holders of record of preferred shares to be redeemed at their respective addresses as they appear on our stock transfer records. Each notice shall state:

the redemption date;

the number of preferred shares to be redeemed;

the redemption price;

Table of Contents

the place or places where certificates for the preferred shares are to be surrendered for payment of the redemption price; and

that dividends on the shares to be redeemed will cease to accrue on such redemption date.

If fewer than all the preferred shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of preferred shares to be redeemed from such holder. In order to facilitate the redemption of preferred shares, the board of directors may fix a record date for the determination of preferred shares to be redeemed, such record date to be not less than 30 or more than 60 days prior to the date fixed for such redemption.

Notice having been given as provided above, from and after the date specified therein as the date of redemption, unless we default in providing funds for the payment of the redemption price on such date, all dividends on the preferred shares called for redemption will cease to accrue. From and after the redemption date, unless we so default, all rights of the holders of the preferred shares as our stockholders, except the right to receive the redemption price (but without interest), will cease. Upon surrender in accordance with such notice of the certificates representing any such shares (properly endorsed or assigned for transfer, if our board of directors shall so require and the notice shall so state), the redemption price set forth above shall be paid out of the funds provided by us. If fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

Subject to applicable law and the limitation on purchases when dividends on the preferred shares are in arrears, we may, at any time and from time to time, purchase preferred shares in the open market, by tender or by private agreement.

Voting Rights

Except as indicated below, and except as expressly required by applicable law, the holders of preferred shares will not be entitled to vote.

If the equivalent of six quarterly dividends (whether or not consecutive) payable on the Series K Preferred Shares or any other series of our preferred stock ranking equally with the Series K Preferred Shares as to dividends or upon liquidation (any such series referred to as parity preferred shares) is in arrears, the holders of all outstanding preferred shares and shares of any series of parity preferred shares, voting as a single class without regard to series, will be entitled to elect two additional directors until all dividends in arrears have been paid or declared and funds therefor set apart for payment.

At any time when such right to elect directors separately shall have so vested, we may, and upon the written request of the holders of record of not less than 20% of the total number of preferred shares and shares of any series of parity preferred shares then outstanding shall, call a special meeting of stockholders for the election of such directors. Such special meeting shall be held, in the case of such a written request, within 90 days after the delivery of such request and, in either case, at the place and upon the notice provided by law and in our bylaws, *provided* that we shall not be required to call such a special meeting if such request is received less than 120 days before the date fixed for our next annual meeting of stockholders and the holders of all classes of outstanding preferred stock are offered the opportunity to elect such directors (or fill any vacancy) at such annual meeting of stockholders. Directors so elected shall serve until our next annual meeting of stockholders or until their respective successors are elected and qualify, or, if sooner, until all dividends in arrears have been paid or declared and funds therefor set apart for payment. If, prior to the end of the term of any director so elected, a vacancy in the office of such director shall occur, during the continuance of a default in dividends on our preferred stock, by reason of death, resignation or disability, such vacancy shall be filled for the unexpired term of such former director by the appointment of a new director by the remaining director or directors so elected.

The affirmative vote or consent of the holders of at least 66²/₃% of the outstanding preferred shares and of any series of parity preferred shares, voting as a single class, will be required to authorize another class of capital stock senior to the preferred shares with respect to the payment of dividends or the

Table of Contents

distribution of assets on liquidation. The affirmative vote or consent of the holders of at least 66²/₃% of the outstanding preferred shares will be required to amend or repeal any provision of, or add any provision to, the articles of amendment and restatement, including the articles supplementary that will define the terms of the preferred shares, if such action would materially and adversely alter or change the rights, preferences or privileges of the outstanding preferred shares.

No consent or approval of the holders of preferred shares will be required for the issuance from our authorized but unissued preferred stock of other shares of any series of preferred stock ranking equally with or junior to the preferred shares as to payment of dividends and distribution of assets.

S-14

Table of Contents

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

Considerations Relating to REITs

A summary of the material U.S. federal income tax matters of general application pertaining to REITs under the U.S. Internal Revenue Code of 1986, as amended, referred to as the Code, is provided in the accompanying prospectus under the heading Certain U.S. Federal Income Tax Considerations. To reflect changes in the REIT tax rules that were enacted in October 2004 and December 2005, the following paragraph hereby replaces the final paragraph of the discussion contained in that section:

In the event that we fail to meet certain gross income tests applicable to REITs, we may retain our qualification as a REIT if we pay a penalty tax equal to the amount by which 95% (or 90% for taxable years prior to 2005) or 75% of our gross income exceeds our gross income qualifying under the 95% or 75% gross income test, respectively (whichever amount is greater), multiplied by a fraction intended to reflect our profitability, so long as such failure was considered to be due to reasonable cause and not willful neglect and certain other conditions are satisfied. For taxable years after 2004, if we fail to meet the 5% or 10% asset tests applicable to REITs at the end of any quarter and did not cure such failure within 30 days thereafter, we may nonetheless retain our qualification as a REIT provided that the failure was due to assets the value of which did not exceed a specific statutory *de minimis* amount and certain other conditions are satisfied. For violations of any of the REIT asset tests not described in the preceding sentences, we may nonetheless retain our qualification as a REIT if we pay a tax equal to the greater of \$50,000 or 35% of the net income generated by the non-qualifying assets, so long as any such failure was considered to be due to reasonable cause and not willful neglect and certain other conditions are satisfied. In addition, if we fail to satisfy certain requirements of the REIT provisions (other than the failures described above in the preceding sentences), we may nonetheless retain our qualification as a REIT if we pay a penalty of \$50,000 for each such failure, so long as each such failure was considered to be due to reasonable cause and not willful neglect. Any such taxes or penalty amounts would adversely affect our ability to pay dividends and distributions to our stockholders and interest and principal to the holders of our debt securities.

Considerations Relating to Our Depositary Shares

The following is a general discussion of certain material U.S. federal income tax consequences of the ownership and disposition of depositary shares by a beneficial owner that is a U.S. stockholder (as defined below). This discussion is based on the Code, Treasury Regulations and administrative and judicial interpretations thereof, all as in effect as of the date of this prospectus supplement, and all of which are subject to change, possibly with retroactive effect. This discussion does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to investors subject to special treatment under the U.S. federal income tax laws, such as dealers in securities, insurance companies, tax-exempt entities (except as described herein), expatriates, financial institutions, non-U.S. stockholders (except as described herein) and partnerships or other pass-through entities. This section applies only to purchasers of depositary shares who purchase such shares pursuant to this offering and hold such U.S. shares as capital assets within the meaning of Section 1221 of the Code.

Prospective holders should consult their tax advisors with respect to the U.S. federal income tax consequences of holding and disposing of the depositary shares in light of their particular situations and any consequences to them arising under other U.S. federal tax laws and the laws of any state, local or non-U.S. jurisdiction.

As used herein, the term U.S. stockholder means a holder of depositary shares that for U.S. federal income tax purposes is:

an individual citizen or resident of the United States,

a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or any political subdivision thereof,

Table of Contents

an estate the income of which is subject to U.S. federal income taxation regardless of its source, or

a trust if

a U.S. court is able to exercise primary supervision over the administration of that trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or

it has a valid election in place to be treated as a U.S. person.

As used herein, the term non-U.S. stockholder means a holder of our depositary shares that for U.S. federal income tax purposes is either a nonresident individual alien or a corporation, estate or trust that is not a U.S. stockholder.

The U.S. federal income tax treatment of a partner in a partnership holding depositary shares will depend on the activities of the partnership and the status of the partner. A partner in such partnership should consult its own tax advisor regarding the U.S. federal income tax treatment to the partner of such partnership holding the depositary shares.

Owners of depositary shares will be treated for U.S. federal income tax purposes as if they were direct owners of the preferred shares represented by those depositary shares and, accordingly, the following discussion of tax consequences pertaining to the depositary shares pertains equally to the preferred shares. Exchanges of preferred shares for depositary shares and depositary shares for preferred shares generally will not be subject to U.S. federal income tax.

Except as set forth above, this prospectus supplement does not address our taxation or the impact on us of our election to be taxed as a REIT. Prospective investors are urged to consult the information above under the heading

Considerations Relating to REITs and our accompanying prospectus under the heading Certain U.S. Federal Income Tax Considerations for information relating to our taxation as a REIT. The discussion set forth below assumes that we qualify and remain qualified as a REIT under the Code.

Taxable U.S. Stockholders

Distributions. Except as discussed below, distributions with respect to our depositary shares made out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be includible by a U.S. stockholder as ordinary income for U.S. federal income tax purposes. None of these distributions will be eligible for the dividends received deduction for a corporate stockholder. For purposes of determining whether distributions on our depositary shares are made out of current or accumulated earnings or profits, our earnings and profits will be allocated first to distributions on our preferred stock, including depositary shares, based on distribution priority, and then to distributions on our common stock. Distributions in excess of current and accumulated earnings and profits will not be taxable to a U.S. stockholder to the extent that they do not exceed the adjusted tax basis of the holder's depositary shares, but rather will be treated as a return of capital and reduce the adjusted basis of such depositary shares. To the extent that such distributions exceed the adjusted basis of a U.S. stockholder's depositary shares, they will be included in income as long-term capital gain if the stockholder has held its shares for more than one year and otherwise as short-term capital gain. Any dividend declared by us in October, November or December of any year payable to a stockholder of record on a specified date in any such month shall be treated as both paid by us and received by the stockholder on December 31 of such year, *provided* that the dividend is actually paid by us during January of the following calendar year.

Dividends paid to a noncorporate U.S. stockholder generally will not qualify for the 15% tax rate applicable to qualified dividend income. The Jobs and Growth Tax Relief Reconciliation Act of 2003 reduced the maximum tax rate for qualified dividend income to 15% for tax years beginning on or before December 31, 2008 and the Tax Increase Prevention and Reconciliation Act of 2005 extended the 15% rate to tax years beginning on or before December 31, 2010. Qualified dividend income generally includes dividends paid by domestic C corporations and certain qualified foreign corporations to most noncorporate U.S. stockholders. Because we are not generally subject to federal income tax on the portion of our REIT taxable income that we distribute to our stockholders, our dividends generally will not be eligible for the 15% tax rate on qualified dividend income. As a result, our ordinary REIT dividends will continue to be taxed at the higher tax rate applicable to ordinary income. Currently, the highest

marginal individual

S-16

Table of Contents

income tax rate on ordinary income is 35%. However, the 15% tax rate for qualified dividend income will apply to our ordinary REIT dividends, if any, that are (i) attributable to dividends received by us from non-REIT corporations, such as our taxable REIT subsidiaries, or (ii) attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a U.S. stockholder must hold our stock (with risk of loss) for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend and must satisfy certain other conditions.

Distributions that are designated as capital gain dividends will generally be taxed as long-term capital gains (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the holder has held our preferred stock. However, corporate holders may be required to treat up to 20% of certain capital gain dividends as ordinary income.

We may elect to retain and pay income tax on our net capital gain received during the taxable year. If we so elect for a taxable year, our U.S. stockholders would include in income as long-term capital gains their proportionate share of such portion of our undistributed net capital gains for the taxable year as we may designate. A U.S. stockholder would be deemed to have paid its share of the tax paid by us on such undistributed net capital gain, which would be credited or refunded to the stockholder. The U.S. stockholder's basis in the depositary shares would be increased by the amount of undistributed net capital gain included in such U.S. stockholder's income, less the capital gains tax paid by us.

The maximum tax rate on long-term capital gain applicable to noncorporate taxpayers is 15% for sales and exchanges of assets held for more than one year occurring in taxable years beginning on or before December 31, 2010. The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property, or depreciable real property, is 25% to the extent that such gain would have been treated as ordinary income if the property were section 1245 property (i.e., to the extent of depreciation recapture). With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally may designate whether such a distribution is taxable to our noncorporate U.S. stockholders at a 15% or 25% tax rate. Thus, the tax rate differential between capital gain and ordinary income for noncorporate taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A noncorporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A noncorporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

Stockholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, such losses would be carried over by us for potential offset against our future income (subject to certain limitations). Taxable distributions from us and gain from the disposition of depositary shares will not be treated as passive activity income and, therefore, stockholders generally will not be able to apply any passive activity losses (such as losses from certain types of limited partnerships in which the stockholder is a limited partner) against such income. Taxable distributions from us generally will be treated as investment income for purposes of the investment interest limitations. Capital gains from the disposition of depositary shares (or distributions treated as such) will be treated as investment income only if the stockholder so elects, in which case such capital gains will be taxed at ordinary income rates. We will notify stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute each of (i) distributions taxable at ordinary income tax rates, (ii) capital gains dividends, (iii) qualified dividend income, if any, and (iv) returns of capital.

Sale or Exchange of Depositary Shares. Upon the sale or exchange of depositary shares to a person other than us, a U.S. stockholder generally will recognize gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received (less any portion thereof attributable to accumulated and declared but unpaid dividends, which will be taxable as dividends to the

Table of Contents

extent of our current and accumulated earnings and profits) and (ii) the U.S. stockholder's adjusted tax basis in such shares. Such gain or loss will be capital gain or loss and will be long-term capital gain or loss if such shares have been held for more than one year. In general, any loss upon a sale or exchange of depositary shares by a holder who has held such shares for six months or less (after applying certain holding period rules) will be treated by such holder as long-term capital loss to the extent of distributions from us required to be treated by such U.S. stockholder as long-term capital gain. All or a portion of any loss realized upon a taxable disposition of depositary shares may be disallowed if substantially identical stock or securities are purchased within 30 days before or after the disposition. In addition, the ability to otherwise deduct capital losses may be limited under the Code.

Redemption of Depositary Shares. A redemption of depositary shares will be treated under Section 302 of the Code as a distribution taxable as a dividend (to the extent of our current and accumulated earnings and profits) at ordinary income rates unless the redemption satisfies one of the applicable tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of redeemed shares, except that the portion of the redemption proceeds attributable to accrued and declared but unpaid dividends will be taxable in any event as a dividend to the extent of our current and accumulated earnings and profits. The redemption generally will be treated as a sale or exchange if it (i) results in a complete termination of the U.S. stockholder's share interest in us, (ii) is substantially disproportionate or (iii) is not essentially equivalent to a dividend with respect to the stockholder, all within the meaning of Section 302(b) of the Code. In determining whether any of these tests have been met, depositary shares considered to be owned by a U.S. stockholder by reason of certain constructive ownership rules set forth in the Code, as well as depositary shares actually owned by such U.S. stockholder, must generally be taken into account. Because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to any particular U.S. stockholder depends upon the facts and circumstances at the time that the determination must be made, prospective U.S. stockholders are advised to consult their own tax advisors to determine such tax treatment.

If a redemption of depositary shares is not treated as a distribution taxable as a dividend to a particular U.S. stockholder, it will be treated as a taxable sale or exchange. See *Sale or Exchange of Depositary Shares* above.

If a redemption of depositary shares is treated as a distribution taxable as a dividend, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received by such U.S. stockholder. The U.S. stockholder's adjusted basis in the redeemed depositary shares for tax purposes will be transferred to such stockholder's remaining depositary shares or other shares of our stock. If the stockholder owns no other shares of our stock, such basis may, under certain circumstances, be transferred to a related person or it may be lost entirely.

Tax-Exempt U.S. Stockholders

Distributions by us to a tax-exempt U.S. stockholder generally should not constitute unrelated business taxable income (UBTI), *provided* that (i) the U.S. stockholder has not financed the acquisition of its depositary shares with acquisition indebtedness within the meaning of the Code and (ii) our depositary shares are not otherwise used in an unrelated trade or business of such tax-exempt U.S. stockholder.

Notwithstanding the preceding paragraph, under certain circumstances, qualified trusts that hold more than 10% (by value) of our shares of stock may be required to treat a certain percentage of dividends as UBTI. This requirement will only apply if we are treated as a pension-held REIT. The restrictions on ownership of shares of stock in our articles of amendment and restatement should prevent us from being treated as a pension-held REIT, although there can be no assurance that this will be the case.

Table of Contents

Backup Withholding

We will report to our U.S. stockholders and the Internal Reve